

MEMO ENDORSED

p.2



THE CITY OF NEW YORK
LAW DEPARTMENT

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NEW YORK, NY 10007

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January 31, 2008

VIA FACSIMILE

Honorable Richard M. Berman
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 650
New York, New York 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 1/31/08

Re: Wingate v. The Department of Correction, et. al.
07-CV-8679 (RMB)(REL)

Dear Judge Berman:

I am the attorney in the Office of the Corporation Counsel assigned to the above-referenced matter, in which an inmate, presently incarcerated and proceeding *pro se*, is suing the Department of Correction (“DOC”) for allegedly failing to place him in heat sensitive housing. On January 22, 2008, I wrote this court to respectfully request a pre-motion conference pursuant to the Court’s individual’s rules, so that the named defendants could move, pursuant to Fed. R. P. 12(b)(6), to dismiss the Complaint on the grounds that plaintiff failed to exhaust his administrative remedies as required by the Prison Reform Litigation Act (“PLRA”) 42 U.S.C. §1997(e).

On January 23, 2008 the Court granted the defendants’ application, scheduling the conference for February 4, 2008, and requiring the defendants to arrange for the inmate to appear telephonically. On January 25, 2008, I confirmed that the inmate would be available for the

conference. However, today, upon once again calling DOC to confirm the plaintiff's availability, I learned that on the date of the conference, the plaintiff is scheduled to appear in Queens Criminal Court, AP3, at 9:00 am to face charge 22003, Possession of a Controlled Substance, Docket No.: 2007-QN018606.

Given that the plaintiff will be unavailable to appear at the pre-motion conference, I respectfully request that the conference be rescheduled to Monday, February 11, 2008, or any date convenient to the Court. The defendants are prepared to discuss the substance of their proposed motion before Your Honor on any date the Court deems acceptable.

Thank you for your consideration of defendants' request to reschedule the pre-motion conference in this matter to February 11, 2008, or any date convenient to the Court.

Respectfully,



Michael A. Suarez (MS 5038)
Assistant Corporation Counsel

<u>ADJOURNED TO 2/11/08 AT</u>	
<u>11:30 A.M. DEF. TO ARRANGE</u>	
<u>FOR PL. TO APPEAR BY PHONE.</u>	
<u>SO ORDERED:</u>	
Date:	<u>1/31/08</u>
<u>Richard M. Berman</u>	
Richard M. Berman, U.S.D.J.	